

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	§	
	§	No. 499, 2011
Plaintiff Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in
	§	and for New Castle County
v.	§	
	§	
LEVAL E. PETTY,	§	ID No. 100900052
	§	
Defendant Below-	§	
Appellee.	§	

Submitted: July 18, 2012

Decided: July 31, 2012

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

***ORDER***

This 31<sup>st</sup> day of July 2012, it appears to the Court that:

(1) The State of Delaware appeals as of right<sup>1</sup> from a Superior Court order sentencing Defendant-Below/Appellee, Leval E. Petty, to three years of imprisonment for his conviction of Attempted Robbery First Degree. The State contends that because Petty was declared a habitual offender for this conviction, which was a violent felony, the Superior Court was required by law to sentence Petty to at least the statutory maximum penalty for that

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<sup>1</sup> See 10 Del. C. § 9902(a), (f).

conviction.<sup>2</sup> The statutory maximum penalty for Attempted Robbery First Degree is twenty-five years of Level V imprisonment.<sup>3</sup>

(2) On appeal, Petty concedes that as a matter of law the Superior Court was required to impose a minimum sentence of twenty-five years pursuant to 11 *Del. C.* § 4214(a). But, Petty argues that the State has waived appellate review of the sentencing issue by failing to brief the issue below after sentencing or move for a correction of sentence under Superior Court Criminal Rule 35(a).

(3) We find no merit to Petty’s waiver argument. At sentencing, the State made a timely objection to the sentence imposed. Because the parties agree and the record shows that the sentence imposed does not comply with the applicable statutes, we must reverse and remand for resentencing.

(4) NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **REVERSED** and this matter is **REMANDED** for

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<sup>2</sup> See 11 *Del. C.* § 4214(a) (“Notwithstanding any provision of this title to the contrary, any person sentenced pursuant to this subsection shall receive a minimum sentence which shall not be less than the statutory maximum penalty provided elsewhere in this title for the 4th or subsequent felony which forms the basis of the State’s petition to have the person declared to be an habitual criminal except that this minimum provision shall apply only when the 4th or subsequent felony is a Title 11 violent felony, as defined in § 4201(c) of this title.”)

<sup>3</sup> 11 *Del. C.* § 832(a), (c); § 4205(b)(2).

sentencing on the Attempted Robbery First Degree charge consistent with the applicable penal statutes.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice